IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MICKEY D. ADAM, et al., Plaintiffs, vs. OKLAHOMA LAW ENFORCEMENT RETIREMENT BOARD as set forth in Oklahoma Statutes Title 47 Sections 2-300 et seq., et al., Defendants.	)	No. CIV-01-418-A (Marten)

MEMORANDUM ORDER

(Filed Mar. 5, 2002)

Currently before the court in this action challenging the Oklahoma system of law enforcement retirement benefits is the motion by the defendants to dismiss on the grounds that the action is barred by the statute of limitations. Plaintiffs challenge the constitutionality of the Oklahoma legislature's decision in 1980 to alter the formula for retirement benefits. Plaintiffs are former highway patrolmen who were vested in the retirement system by July 1, 1980.

The present action was filed on March 8, 2001, over twenty years after the challenged legislation. Despite repeated opportunities, plaintiffs have never effectively addressed the issue of the statute of limitations, other than speculating, without authority, that either no statute of limitations applies to their claim, or that the complaints may somehow be maintained pursuant to 12 O.S. § 101. The general Oklahoma Statute of limitations, 12 O.S. Supp. 2000 § 95, governs the action. It provides:

> Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:
>
> 1. Within five (5) years: An action upon any contract, agreement or promise in writing;
>
> 2. Within three (3) years: An action upon a contract expressed or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;
>
> 3. Within two (2) years: . . . an action for injury to the rights of another.

Here, the cause of action began at the time of the challenged legislative act. *See Gilben v. City of Cambridge*, 745 F.Supp. 42, 46 (D. Mass. 1990). Pursuant to subsection 2 of the statute of limitations, the plaintiffs had three years from the legislative action in 1980 to bring their claims grounded on alleged violation of the state constitution. *See City of Oklahoma City v. Daly*, 316 P.2d 129 (Okla. 1957) (civil action asserting violation of state constitution was a claim "upon a liability created by a statute" within meaning of the statute of limitations). But, even assuming the longest statute of limitations period (five years for actions upon contract) applied, the present action's claims asserting state constitutional violations would remain outside the time permitted by law. With respect to plaintiffs' claims asserting violation of the federal constitution, such claims are subject to the two-year limitations period for an action "for injury to rights of another." *Meade v. Grubbs*, 841 F.2d 1512, 1522-24 (10th Cir. 1988).

There is no tolling doctrine or other exception to the time bar applicable in the present action. For example, there is no conflict between defendants' actions and existing Oklahoma or federal statutes. *Cf. Elephant Butte Irr. Dist. v. Department of Interior*, 160 F.3d 602 (10th Cir. 1998). Section 101, which provides for tolling of the statute in certain cases such as partial payment of an acknowledged debt or upon an open account, has no application herein. Plaintiffs have wholly failed to demonstrate the payment of any disputed amounts by the defendants, any written acknowledgment of an existing liability, or a promise in writing signed by the defendants to pay the claims of the plaintiffs.

In sum, the time bar of § 95 applies. Plaintiffs have failed to identify any credible basis for avoiding application of the bar.

IT IS ACCORDINGLY ORDERED this 27th day of February, 2002, that the defendants' Motion to Dismiss is hereby granted.

/s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE